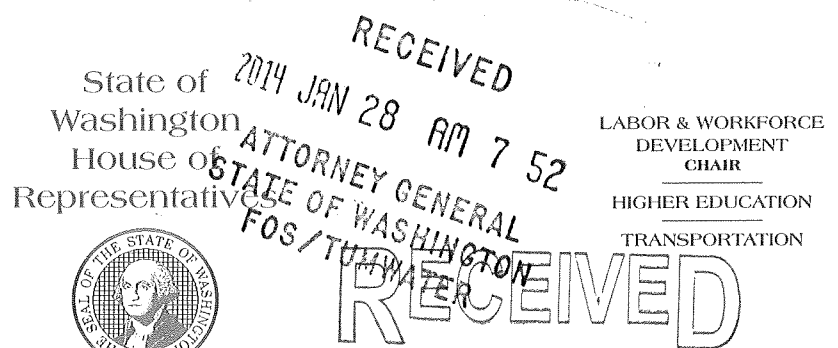


STATE REPRESENTATIVE
38th DISTRICT
MIKE SELLS



January 27, 2014

Attorney General Bob Ferguson
1125 Washington Street SE
PO Box 40100
Olympia, WA 98504-0100

ATTORNEY GENERAL'S OFFICE
Solicitor General's Division

Re: Request for Attorney General Opinion
Scope of Bargaining Issues Regarding Supplemental Retirement and
Health and Welfare Plans Under RCW 41.80

Dear Mr. Ferguson:

I am writing to request a Formal Opinion of the Attorney General regarding the scope of bargaining issues under RCW 41.80, specifically as it relates to the ability of a labor organization to negotiate with the State regarding supplemental retirement and/or health and welfare plans that exist outside of the State's retirement plans created by statute and the State's health and welfare plans for active participants.

It is well-established that there are three categories of subjects that parties may face in collective bargaining negotiations: mandatory subjects, permissive subjects and illegal subjects. The Employer is required to bargain with the certified collective bargaining representative ("Union") regarding mandatory subjects of bargaining. The Employer can—but is not required to—bargain with the Union regarding permissive subjects of bargaining. However, the parties are prohibited from bargaining about any illegal subject of bargaining. The statute of concern is the Personnel System Reform Act, RCW 41.80, which addresses the bargaining obligations of the State relative to Unions that represent certain categories of State employees.

The questions on which I seek your opinion are as follows:

- 1. Does RCW 41.80 Require, Permit or Prohibit The State From Bargaining Regarding Supplemental Retirement Benefits That Exist Independently Of State Retirements Such As PERS or PSERS? In Other Words, Is This A Mandatory, Permissive or Illegal Subject of Bargaining?**

RCW 41.80.020(2)(b) suggests that the employer may, but is not required to bargain regarding any "retirement system or retirement benefit." It would appear from this language that retirement systems or benefits are a permissive subject of bargaining; i.e., the State can, but is not required to, bargain with Unions regarding the topic. Accordingly, if a Union were to propose that State employees participate in a



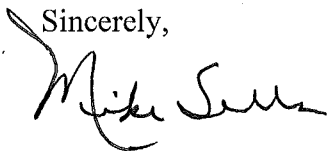
supplemental retirement plan that exists independently of the State retirement systems (like PERS or PSERS), the State would be free to bargain about that issue. However, RCW 41.80.040(5) prohibits bargaining over “retirement plans and retirement benefits.” It is unclear whether the use of the term “retirement plans” differs in meaning from “retirement systems” in RCW 41.80.020(2)(b), but it would seem that this section relates specifically to the State-controlled retirement systems, i.e., PERS and PSERS. In any event, the question remains whether the negotiation of a supplemental retirement system outside of State controlled retirement plans like PERS and PSERS is a mandatory, permissive or illegal subject of bargaining.

2. Does RCW 41.80 Require, Permit or Prohibit The State From Bargaining Regarding Health and Welfare Plans For Retirees? In Other Words, Is This A Mandatory, Permissive or Illegal Subject of Bargaining?

RCW 41.80.020(2)(a) addresses the State’s obligation to bargain health care benefits and other employee insurance benefits for active employees. There does not appear to be any language in RCW 41.80 that specifically addresses the bargaining of health care benefits for retirees (commonly known as “retirees’ health and welfare benefits”). Accordingly, if a labor organization were to propose to the State that represented employees be allowed to participate in a retirees’ health and welfare program, it is unclear whether this issue is a mandatory, permissive or illegal subject of bargaining. Certainly, the issue of health and welfare benefits and retirees’ health and welfare benefits is not addressed in RCW 41.80.040 so it would appear that the issue is not an illegal subject of bargaining. RCW 41.80.020(3) requires the State to negotiate certain aspects of health and welfare and insurance benefits for active employees in a negotiation that occurs with a coalition of all State employee Unions. Specifically, the State must bargain “the dollar amount expended on behalf of each employee for health care benefits,” (this is therefore a mandatory subject of bargaining), but this section appear to apply to benefits for active employees as opposed to retirees, and in any event, it does not appear to address the issue of the scope of participation by employees in health and welfare plans. Accordingly, we seek your opinion as to whether the negotiation of a retirees’ health and welfare system or benefits is a mandatory, permissive or illegal subject of bargaining.

I look forward to your response on these questions. Thank you in advance for your work, and if you require clarification or additional information related to these questions, please let me know.

Sincerely,

A handwritten signature in black ink, appearing to read "Mike Sells", with a stylized flourish at the end.

Mike Sells
State Representative
38th Legislative District